No. 111

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CHARLES ELMORE CROPLEY
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

MAY DEPARTMENT STORES, a Corporation,
Petitioner,

vs.

JOHN REYNOLDS, JR., by JOHN REYNOLDS, Next Friend,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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I.

For several years respondent has been seeking to have a jury decide whether petitioner exercised the degree of care the law imposed upon it for the safety of an infant when it invited him to use an escalator having a mechanical construction which permitted the catching and mangling of his fingers and having lack of usable supportive handrails, and having unsupervised operation; and whether this lack of care was not the proximate cause of plaintiff's serious injury. Petitioner's desire and present purpose is to keep any jury from deciding these questions. That is why it now asks certiorari.

If the question of petitioner's negligence is one about which reasonable minds may differ, the question should be submitted to a jury. Petitioner, therefore, is forced to claim that on the question involved, reasonable minds could not differ. But the minds of the learned Judges of the Circuit Court of Appeals for the Eighth Circuit unanimously differed with the petitioner's professed view. Therefore, to say the best for petitioner, reasonable minds can and do differ on this question of negligence, and the decision is for a jury.

II.

The decision of the Circuit Court of Appeals is in entire harmony with the applicable local decisions. The opinion cites the cases of Graves v. May Department Stores Company, 153 S. W. (2nd) 778 (Mo. App.) and Jablonsky v. May Department Stores Company, 153 S. W. (2nd) 786 (Mo. App.). In those cases are cited other Missouri authorities showing they are in complete accord with the settled and traditional Missouri law. The opinion below was not based on the Graves and Jablonsky cases alone. It states that its decision was "further compelled" by those cases.

Petitioner says it believes the Graves and Jablonsky cases are distinguishable from the instant case. That would be an amazing feat of legal legerdemain. In all three cases (the Graves and Jablonsky cases and this one) the escalators are identical in pattern, measurements and details of construction. They are companion escalators which were all installed at the same time by the same manufacturer. In all three cases this same petitioner has been sued for injuries to the hands of small children, and each of the three children was hurt because of the same defect in this type of escalator. The Missouri court has held that it is a menace to children and that its operation presents a ques-

tion of negligence for a jury. The only distinction possible is that the petitioner owed a higher degree of care to this respondent because he was an invitee passenger, whereas the two other children were not. The cases are more than in point—they are decisive.

The petition for certiorari should be denied.

Respectfully submitted,

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